

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HARVARD EYE ASSOCIATES	:	CIVIL ACTION
	:	
v.	:	
	:	
CLINITEC INTERNATIONAL, INC.	:	NO. 98-302

O R D E R - M E M O R A N D U M

AND NOW, this 15th day of July, 1998, the motion of plaintiff Harvard Eye Associates to dismiss Counts II and IV of the counterclaim of defendant Clinitec International, Inc., Fed. R. Civ. P. 12(b)(6),<sup>1</sup> is ruled on as follows:

1. Intentional interference with prospective contractual relations (Count II) - denied. Kachmar v. Sunguard Data Systems, Inc., 109 F.3d 173, 184 (3d Cir. 1997) ("[T]he Pennsylvania Supreme Court requires that there be an objectively reasonable probability that a contract will come into existence."). Defendant's counterclaim states that Dr. Roger Ohansian's misrepresentations about defendant's abilities and integrity resulted in defendant losing \$200,000 worth of potential West Coast business. ¶¶ 122-127. While the potential contracts are not

---

<sup>1</sup> Under Rule 12(b)(6), the allegations of the complaint are accepted as true, all reasonable inferences are drawn in the light most favorable to the plaintiff, and dismissal is appropriate only if it appears that plaintiff could prove no set of facts that would entitle him to relief. Weiner v. Quaker Oats Co., 129 F.3d 310, 315 (3d Cir. 1997).

specifically identified, defendant has "allege[d] facts that, if true, would give rise to a reasonable probability that particular anticipated contracts would have been entered into." Advanced Power Systems, Inc. v. Hi-Tech Systems, Inc., 801 F. Supp. 1450, 1459 (E.D. Pa. 1992) (citations omitted).

2. Commercial disparagement (Count IV) – granted with leave to amend no later than August 4, 1998. To state a claim for commercial disparagement, special damages must be pleaded. Menefee v. Columbia Broadcasting System, Inc., 458 Pa. 46, 56, 329 A.2d 216, 220 (1974) (direct pecuniary loss must be pleaded); KBT Corp., Inc., v. Ceridian Corp., 966 F. Supp. 369, 375 (E.D. Pa. 1997); Fed. R. Civ. P. 9(g) ("When items of special damages are claimed, they shall be specifically stated."). Damages in the counterclaim, ¶¶ 136-141, are not stated with the requisite specificity.

---

Edmund V. Ludwig, J.